IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.6415 OF 2005

Sheku Kurkurya Kale ...Applicant
vs.
State of Maharashtra ...Respondent

Mr.Pratap Patil for the Applicant
Ms S.D.Shinde, A.P.P. for State

CORAM: A.S.OKA,J.
DATE : OCTOBER 6,2005

P.C.:

1. Heard Advocate for the Applicant and the learned A.P.P. for State. The offence is under Sections 307, 147, 148, 504, 506 read with Section 34 of the Indian Penal Code. The learned Advocate for the Applicant submitted that the Applicant is entitled to claim parity on the basis of order passed in Criminal Application 4104 of 2005. He submitted that apart from claim of parity the Applicant is entitled to be enlarged on bail on merits. He submitted that taking the prosecution case as true, at highest, it can be said that the Applicant was present when the co-accused poured kerosene on the person of the deceased and lighted fire. He, therefore, submitted that the Applicant is entitled to be enlarged on bail. The learned A.P.P. submitted that the F.I.R. filed at the instance of the deceased shows that after she was put on fire, the Applicant and the co-accused assaulted her by kicks and fist blows. The learned A.P.P. submitted that there are other offences registered against the Applicant and therefore

he is not entitled to be enlarged on bail.

2. I have considered the submissions. Though the F.I.R. discloses that the Applicant assaulted the deceased by kicks and fist blows, in the dying declaration the deceased has not stated so. The dying declaration indicates that one co-accused poured kerosene on the person of the deceased and the other accused lighted fire and the third one was holding the deceased. The dying declaration at highest disclosed that the Applicant was present. One eye witness viz. Suman Abba Pawar who is the mother-in-law of the deceased has also not stated about the assault by the Applicant on the deceased. She has stated that the Applicant and the other co-accused assaulted her by kicks and fist blows. If this is the version of prosecution case as reflected from the investigation papers, after completion of the investigation the Applicant cannot be detained.

3. Considering the nature of the offence and the material available on record, he cannot be denied bail only on the ground of criminal antecedents. Therefore, the Applicant is entitled to be enlarged on bail subject to stringent conditions :

4. Hence I pass the following order :

i) The Applicant shall be enlarged on bail in connection with C.R.No.10 of 2005 registered at Kurduwadi Police Station, Solapur subject to furnishing a personal bond of Rs.15,000/- (Rupees fifteen thousand only) with one or two local sureties in the like amount.

ii) The bail is granted subject to condition that the Applicant will attend the concerned Police Station twice a week.

iii) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

iv) The Applicant shall cooperate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicant to delay the trial may be a ground for cancellation of bail.

v) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vi) Application is disposed of in above terms.

vii) Parties to act upon an authenticated copy of this order.

JUDGE